



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 981**

**[Doc. No. AMS-SC-16-0045; SC16-981-2 FR]**

**Almonds Grown in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Almond Board of California (Board) for an increase of the assessment rate established for the 2016-17 through the 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds handled under the marketing order (order). Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) is available as credit-back for handlers who conduct their own promotional activities. The assessment rate will return to \$0.03 for the 2019-20 and subsequent crop years, and the amount available for handler credit-back will return to \$0.018 per pound (60 percent). The Board locally administers the order and is comprised of growers and handlers of almonds grown in California. Assessments upon almond handlers are used by the Board to fund reasonable and necessary expenses of the program. The crop year began on August 1 and ends on July 31. The \$0.04 assessment rate will remain in effect until July 31, 2019. Beginning

August 1, 2019, the assessment rate will return to \$0.03 and will remain in effect indefinitely unless modified, suspended, or terminated. Two comments period were provided to interested individuals. Comments will be addressed later in this document.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Marketing Specialist Andrea Ricci, or Regional Director Jeffrey Smutny, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: with Andrea.Ricci@ams.usda.gov or Jeffrey.Smutny@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is

effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning on August 1, 2016, through July 31, 2019. Beginning August 1, 2019, the assessment rate will return to \$0.03 and will remain in effect indefinitely unless modified, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a

hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2016-17 through 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds received. Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) is available as credit-back for handlers who conduct their own promotional activities. The assessment rate will return to \$0.03 for the 2019-20 and subsequent crop years, and the amount available for handler credit-back will return to \$0.018 per pound (60 percent).

The California almond marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and thus are in a position to formulate an appropriate budget

and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2005-06 and subsequent crop years, the Board recommended, and USDA approved, an assessment rate of \$0.03 per pound that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA. Of the \$0.03 per pound assessment, 60 percent (\$0.018) per pound was made available as credit-back for handlers who conducted their own promotional activities.

The Board met on April 12, 2016, and unanimously recommended 2016-17 expenditures of \$69,897,626 and an assessment rate of \$0.04 per pound of almonds received. In comparison, last year's budgeted expenditures were \$58,998,976. The assessment rate of \$0.04 is \$0.01 higher than the rate currently in effect, and the credit-back portion of the assessment rate (\$0.024 per pound) is \$0.006 more than the credit-back portion currently in effect.

The Board estimates a production increase of thirty percent, or 600 million pounds, by the 2019-20 crop year. This increase is nearly as much as is consumed by the

industry's largest market. Due to the size of the increase in forecasted production, the Board believes that increased market development projects and new marketing programs are required to successfully market the additional supply. Accordingly, the Board has recommended a new "Nut of Choice" marketing program.

The Board also anticipates needing additional funding for the industry's new "Crop of Choice" research program, as well as additional research to address concerns such as changing water supply and quality systems; air quality and how it relates to harvesting, pesticide, and energy use; and bee health.

The three-year higher assessment rate is needed to fund the increase in marketing and research activities. The Board anticipates that by the 2019-20 crop year, the increase in production assessed at the reinstated \$0.03 per pound rate should generate sufficient revenue to cover the anticipated expenditures at that time. Therefore, beginning August 1, 2019, the assessment rate will return to \$0.03 per pound.

The following table compares major budget expenditures recommended by the Board for the 2015-16 and 2016-17 crop years:

<b>Budget Expense Categories</b>	<b>2015-16</b>	<b>2016-17</b>
Operations Expenses	\$ 7,904,000	\$ 8,404,000
Board Accelerated Innovation Management (AIM) Initiatives	1,500,000	1,000,000
Crop of Choice Initiatives	0	5,625,000
Reputation Management	1,826,350	2,000,000
Production Research	1,843,331	1,843,331
Environmental Research	1,039,790	1,039,790
Scientific Affairs/Nutrition	1,640,000	1,640,000
Global Market Development	38,583,756	38,583,756
Nut of Choice Initiatives	0	5,100,000
Technical & Regulatory Affairs	1,045,500	1,045,500
Industry Services	2,436,220	2,436,220
Almond Quality & Food Safety	790,800	790,800
Corporate Technology	389,229	389,229

The assessment rate recommended by the Board was derived by considering the anticipated 30-percent production increase in the next three years, anticipated expenditures plus additional program expenses, current production level, and maintaining adequate operating reserve funds. In its recommendation, the Board utilized an estimate of 1,835,290,000 pounds of assessable almonds for the 2016-17 crop year. If realized, this should provide estimated

assessment revenue of \$62,262,213, which reflects credit-back reimbursements and organic exemptions. In addition, it is anticipated that \$20,907,722 will be provided by other sources, including interest income, Market Access Program (MAP) funds, and operating reserve funds. When combined, revenue from these sources should be adequate to cover budgeted expenses.

Section 981.81 of the order authorizes the Board to maintain operating reserve funds consisting of an administrative-research portion and a marketing promotion portion, and states that the amount allocated to each portion shall not exceed six months' budgeted expenses for that activity area. Funds in the reserve at the end of the 2016-17 crop year are estimated to be approximately \$16,581,222, well within the amount permitted by the order.

A proposed rule concerning this action was published in the **Federal Register** on July 18, 2016 (81 FR 46616). A 15-day comment period ending August 2, 2016, was provided for interested persons to respond to the proposal. One commenter raised concern that notification of the proposal was not promptly circulated within industry and asked for an extension of the comment period. After reviewing the request, USDA published a notice reopening the comment period for an additional 30 days in the **Federal Register** on



September 12, 2016 (81 FR 62668). All comments will be addressed further in this document.

The assessment rate established in this rule will continue in effect until July 31, 2019. Beginning August 1, 2019, the assessment rate will return to \$0.03 and will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for a specified period, the Board will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public, and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2016-17 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 6,800 almond growers in the production area and approximately 100 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported in its 2012 Agricultural Census that there were 6,841 almond farms in the production area (California), of which 6,204 had bearing acres. The following computation provides an estimate of the proportion of producers (farms)

and agricultural service firms (handlers) that would be considered small under the SBA definitions.

The NASS Census data indicates that out of the 6,204 California farms with bearing acres of almonds, 4,471 (72 percent) have fewer than 100-bearing acres.

In its most recently reported crop year (2015), NASS reported an average yield of 2,130 pounds per acre and a season average grower price of \$2.84 per pound. A 100-acre farm with an average yield of 2,130 pounds per acre would produce about 213,000 pounds of almonds. At \$2.84 per pound, that farm's production would be valued at \$604,920.

Because the Census of Agriculture indicates that the majority of California's almond farms are smaller than 100 acres, it could be concluded that the majority of growers had annual receipts from the sale of almonds in 2015 of less than \$604,920, well below the SBA threshold of \$750,000. Thus, over 70 percent of California's almond growers would be considered small growers according to SBA's definition.

According to information supplied by the Board, approximately 30 percent of California's almond handlers shipped almonds valued under \$7,500,000 during the 2014-15 crop year and would therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate collected from handlers for the 2016-17 through the 2018-19 crop years from \$0.03 to \$0.04 per pound of almonds received. Of the \$0.04 per pound assessment, 60 percent (or \$0.024 per pound) is available as credit-back for handlers who conduct their own promotional activities, consistent with § 981.441 of the order's regulations and subject to Board approval. The Board unanimously recommended 2016-17 expenditures of \$69,897,626 and an assessment rate of \$0.04 per pound of almonds received. The assessment rate of \$0.04 is \$0.01 higher than the 2015-16 rate, and the credit-back portion of \$0.024 per pound is \$0.006 higher than the current credit-back portion of \$0.018. The quantity of assessable almonds for the 2016-17 crop year is estimated at 1,835,290,000 pounds. This should provide estimated assessment revenue of \$62,262,213, which reflects credit-back reimbursements and organic exemptions. In addition, it is anticipated that \$20,907,722 will be provided by other sources, including interest income, MAP funds, and operating reserve funds. When combined, revenue from these sources should be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2016-17 crop year include \$8,404,000 for Operations Expenses, \$1,000,000 for Board AIM Initiatives, \$5,625,000

for Crop of Choice Initiatives, \$2,000,000 for Reputation Management, \$1,843,331 for Production Research, \$1,039,790 for Environmental Research, \$1,640,000 for Scientific Affairs/Nutrition, \$38,583,756 for Global Market Development, \$5,100,000 for Nut of Choice Initiatives, \$1,045,500 for Technical & Regulatory Affairs, \$2,436,220 for Industry Services, \$790,800 for Almond Quality & Food Safety, and \$389,229 for Corporate Technology.

Budgeted expenses for these items in 2015-16 were \$7,904,000 for Operations Expenses, \$1,500,000 for Board AIM Initiatives, \$0 for Crop of Choice Initiatives, \$1,826,350 for Reputation Management, \$1,843,331 for Production Research, \$1,039,790 for Environmental Research, \$1,640,000 for Scientific Affairs/Nutrition, \$38,583,756 for Global Market Development, \$0 for Nut of Choice Initiatives, \$1,045,500 for Technical & Regulatory Affairs, \$2,436,220 for Industry Services, \$790,800 for Almond Quality & Food Safety, and \$389,229 for Corporate Technology.

The Board estimates a production increase of 30 percent, or 600 million pounds, by the 2019-20 crop year. This increase is nearly as large as the current consumption of the industry's largest market. Increased market development investment as well as new marketing programs will be required to successfully market the additional

supply. Additional investment in research is also needed to address concerns such as changing water supply and quality systems; air quality and how it relates to harvesting, pesticide, and energy use; and bee health. Accordingly, the three-year higher assessment rate is needed to fund the Board's new Nut of Choice marketing program and Crop of Choice research activities. The Board anticipates that by the 2019-20 crop year, the increased production assessed at the reinstated \$0.03 per pound rate should generate sufficient revenue to cover the anticipated expenditures at that time.

Prior to arriving at this budget and assessment rate, the Board held a strategic planning session in February 2016. The Board also considered recommendations made from its various committees, including the Global Market Development Committee, Production Research Committee, and Environmental Committee. Alternative expenditure levels were discussed, based upon the relative value of various activities to the almond industry. Ultimately, the Board unanimously determined that 2016-17 expenditures of \$69,897,626 were appropriate and that the recommended assessment rate, plus income from other sources and operation reverse funds, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2016-17 season could range between \$4.00 and \$2.84 per pound of almonds. Therefore, the estimated assessment revenue for the 2016-17 crop year (disregarding any amounts credited pursuant to \$ 981.41 and \$ 981.441) as a percentage of total grower revenue could range between 1.00 and 1.41 percent, respectively.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the April 12, 2016, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops.) No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As previously noted, a proposed rule concerning this action was published providing a 15-day comment period for interested persons to respond to the proposal. In addition, on September 12, 2016, the comment period was reopened for an additional 30 days. Copies of the proposed rule were provided to all almond handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A total of forty-six comments were



received. Twenty-eight supported and eighteen opposed the proposal. Of the eighteen in opposition, three were grower/handlers, eleven were growers, two individuals were from outside of the production area, and two individuals did not identify themselves.

Of those who supported the proposal, twenty-three were growers.

The majority of the commenters in support of the proposal stated that increasing the assessment rate now was necessary to fund market development programs and new marketing and promotion activities to create demand prior to the onset of the increased production. Commenters noted that the industry is aware of the increasing almond acreage and the need to invest prior to the larger crop materializing. The commenters also noted that the three-year "sunset" feature will ensure that once the additional 30 percent increase in production is realized, the assessment rate will return to the current \$0.03 rate. One commenter noted the need to develop demand for the increased supplies to ensure the carry-over inventory is kept near zero each year, which will help stabilize prices at the grower level and negate the effect of the increased assessment. Another commenter noted that the recent volatility in almond prices illustrates how critically

important it is to make investments now. Several commenters stated the Board has had proven success in the areas of marketing and promotion; nutrition, environmental, and production research; and grower outreach; and they are pleased overall with the work of the Board. Commenters also expressed the need for continued investment in research, specifically in areas that will provide resources for growers to continue to remain profitable in the face of continued challenges. One commenter stated that programs such as the almond order are a good example of a public/private partnership which has worked for the consumer, farmer, and food safety while expanding markets around the world.

The majority of commenters in opposition of the proposal stated the increase of production over the next several years should generate adequate income to fund Board programs. In the development of the budget, the Board contemplated the production forecast of a 30 percent increase in the next three years. The Board anticipates the 2016-17 crop year production at 1.835 billion pounds, 2017-18 crop year production at 2.184 billion pounds, 2018-19 crop year production at 2.277 billion pounds, and 2019-20 crop year production at 2.354 billion pounds. The Board discussed the need to build demand before this increased

production is realized. The Board strongly believes not doing so in advance will negatively impact prices. The Board is concerned that without market expansion and new market development programs, the anticipated 600 million pounds' increase in production will lead to oversupply. This year, after Committee input and Board strategic planning, the Board decided an increase in the assessment rate was necessary. The increase in revenue will be used to fund new marketing programs and increase the budgets of existing market research and development projects. At the \$0.03 assessment rate, the Board determined funding generated would not be adequate to cover anticipated expenses necessary to establish outlets for the increased production. In its recommendation to have the assessment rate revert back to \$0.03 after three years, the Board considered current program needs at the current production level against the anticipated production in the next three years, while recognizing that the increased production will generate adequate income once realized.

In its discussion, the Board also considered the time and resources needed to develop new marketing and promotion programs. The Global Market Demand Committee developed a comprehensive marketing plan, which includes the Nut of Choice program. The plan encompasses expanding the Germany

and Japan markets by increasing funding in order to increase impressions; accelerating momentum by increasing budgets and impressions for the US/Canada, France, United Kingdom, India, and South Korea markets; maintaining budget levels in the China market and Global Initiative; and allocating spending for one to two additional exploratory markets (i.e., Mexico, Indonesia, and Saudi Arabia regions). Prior to the Committee recommending the marketing plan, it reviewed key factors for each market, including market attractiveness, total market demand forecast, market outlook, opportunities and challenges, historical spending data, and low-end and high-end demand potential. The Board also determined that with the current environment of the agriculture industry, investing in new and innovative techniques would be key to the viability of the almond industry moving forward. Key areas of focus are water management, food safety, production, pest management, pollination, biomass, and soil health.

Additionally, several commenters stated that for growers, with the decline in prices and the rising production costs, it is difficult to remain profitable. The Board has had considerable strategic discussions about the continued challenges facing growers, including rising production costs, water availability, and regulatory

impacts, and ways to address the issues. As a result, a substantial portion of the revenue generated by the increased assessment rate is designated for research. More specifically, the newly established nine capabilities of the Crop of Choice Program will fund research at a level of \$5.625 million. Areas of focus include Irrigation and Nutrients; Orchard, Tree, Rootstock; Harvesting; Value-Added Orchard Utilization; Soil Health Management; Pest Management; Food Safety; Pollination; Energy; and the Sustainability Program update and outreach. This investment is intended to develop new and innovative techniques to help the almond industry continue to remain profitable. In addition, the increased investment in market development and new marketing programs is intended to create demand to absorb the anticipated increase in production. In turn, these activities should stabilize prices.

Three commenters raised concern that only 23 percent of the additional funding generated is allocated to direct marketing. The commenters further stated that if at least 80 percent of the additional funding was not allocated to direct marketing and promotion activities, they were opposed to the increase. The Board utilizes a comprehensive strategy that includes a balanced approach for research and marketing and promotion activities to sustain and develop

market outlets. The Board-funded research plays an integral part in supporting the almond industry, which continues to face new challenges as the landscape of agriculture changes.

The Board triennially holds strategic planning retreats to develop tactics that directly address the needs of the almond industry as well as ever-changing market demands.

The Board recommends a budget each year utilizing recommendations made by each Committee. Committees are comprised of industry members and meet regularly to deliberate and prioritize programs. Marketing and promotion has been set as a priority, and recommendations have been made to increase spending. Along with the marketing activities, the Board has a robust research program.

Nutrition, production, environmental, and food safety research has been utilized by the marketing programs to better position almonds in the marketplace. Specifically, in the past several years with the drought in California, the almond industry came under media fire for its water use.

Through the research programs funded by the Board, the marketing team was able to provide data regarding almonds and water use. This research was pivotal in transitioning the conversation from negative to neutral or positive.

Additionally, almonds have a qualified heart-healthy claim, which can be directly linked to the research funded as part

of the nutrition research program. The almond industry's ability to utilize the heart-health claim is a vital part of the marketing program. Further, the Board is celebrating the tenth year of its California Almond Sustainability Program. As consumer demand continues to shift towards products that are sustainable, the Sustainability Program has been a great resource to the marketing program to provide data regarding the sustainability of the almond industry. The research and marketing and promotion activities work interdependently, ensuring the viability of the industry.

Two commenters stated an assessment rate increase should be approved by growers prior to implementation. Two of the commenters questioned the outreach to the growing community, stating growers should have a larger role in the discussion. One of the commenters requested a grower referendum prior to implementation of an assessment rate change. All Board and Committee meetings are open to the public, allowing directly affected persons and other interested parties an opportunity to participate and provide input. On April 14, 2016, the Board sent a memo to almond handlers and growers as part of its mailer, providing notice of the Board's unanimous recommendation to increase the assessment rate. The Board also included an article

regarding the recommendation in the April California Almonds Outlook e-newsletter. In addition, two comment periods were provided, which gave interested parties the opportunity to comment on the recommended proposal. The Board included notice of the comment periods in its industry e-newsletters, on its website (specifically, on the grower site), on its social media platforms, and announced this information at its Committee and Board meetings. Notices of the comment periods were also made available on the USDA website. In response to the request to hold a grower referendum, under the California almond marketing order, referenda are conducted every five years to ascertain whether continuation of the order is favored by growers. The last continuance referendum was held in 2014, and results indicated continued grower support for the order. Furthermore, annual budget and assessment rate recommendations are among the many duties the Board, which is comprised of grower and handler members, is required to perform as authorized under the order.

One commenter raised concern that the additional funding will be used to increase the size and salaries of the organization, which will lead to the continuation of increasing the assessment rate year after year. Also, the commenter expressed concerns about transparency and



availability of financial information. The majority of the funds generated by the increased assessment are allotted to research programs and marketing and promotion activities. For the past several years, operating expenses have fluctuated between 12 percent and 15 percent of the total budget. In the recommended budget for the 2016-17 crop year, operating expenses are approximately 12 percent of the total budget. In addition, in its unanimous recommendation, the Board stipulated that the increased assessment rate continue only through the 2018-19 crop year. The assessment rate will revert to the current \$0.03 rate beginning August 1, 2019. All Board and Committee meetings are open to the public. On a quarterly basis, the Board reviews and approves financial statements at its public meetings. Those documents are made available to the public, and interested persons are encouraged to participate in all meetings.

One commenter expressed concern about the order's credit-back program and that it is not advantageous to non-branded handlers. While credit-back is associated with the assessment rate, the Board did not discuss the program as part of this proposal. This rule does not modify the percentage rate available for handler credit-back.

One commenter raised concern that the Nut of Choice and Crop of Choice programs appear to be an effort to improve

the image of almonds at the expense of other California commodities. USDA has a strict policy against any marketing order boards, committees, or councils disparaging other commodities. USDA reviews all marketing and communication materials prior to publication to ensure that policy is being followed.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2016-17 crop year began August 1, 2016, and the

marketing order requires that the rate of assessment for each crop year apply to all assessable almonds handled during such crop year. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, followed by an additional 30-day comment period.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

**PART 981 - ALMONDS GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 981.343 is revised to read as follows:

§ 981.343 Assessment rate.

For the period August 1, 2016, through July 31, 2019, the assessment rate shall be \$0.04 per pound for California almonds. Of the \$0.04 assessment rate, 60 percent per assessable pound is available for handler credit-back. On and after August 1, 2019, an assessment rate of \$0.03 per pound is established for California almonds. Of the \$0.03 assessment rate, 60 percent per assessable pound is available for handler credit-back.

Dated: November 12, 2016.

---

Elanor Starmer  
Administrator  
Agricultural Marketing Service

